

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Ogden Township, Champaign County, Illinois  
Petitioner,

v.

Union Pacific Railroad Company and the State of Illinois,  
Department of Transportation  
Respondent

T02-0106

Petition seeking an order from the Illinois Commerce Commission  
authorizing permanent closure and removal of the grade crossing  
located on T.R. 131 in Ogden Township, Champaign County,  
Illinois and the trackage of Union Pacific Railway Company. DOT  
No. 166 927K

ORDER

By the Commission:

On October 23, 2002, the Township of Ogden ("Township"), Champaign County, filed its Petition with the Illinois Commerce Commission ("ICC") naming as Respondents the Union Pacific Railroad Company ("UP") and the State of Illinois, Department of Transportation ("IDOT"). The Petition states that the Township requests that the Commission require the TR 131 crossing with the track of the UP be closed, abolished and barricaded to vehicular traffic and that the Township be paid the sum of \$25,000 in incentive compensation from the Grade Crossing Protection Fund ("GCPF") in accordance with the policy of the Commission.

Pursuant to notice, this matter came on for hearing before a duly authorized Administrative Law Judge of the Commission at the Commission's Springfield office on December 11, 2002. Counsel represented the Township. A representative of IDOT, the UP and the Commission's Rail Safety Section staff were present and participated in the hearing. The Ogden Township Highway Commissioner and a representative of the UP presented testimony at the hearing. The Petition was orally amended by counsel for the Township at the December 11, 2002, hearing.

As required by the Law, publication, giving notice of the proposed crossing closure and the date, place, and time of the hearing was made in two newspapers of general circulation in Champaign County. Notice advising of the

hearing was published in *The Ledger of the Village of Ogden* on November 7, 2002, and in *The News-Gazette of the City of Champaign* on November 6, 2002.

The Township, in its Petition alleges that public convenience and necessity no longer require the retention of the TR 131 crossing. TR 131 is a 14-foot wide oil and chip roadway in good condition. It extends in an east-west direction through Ogden Township. 45-50 vehicles per day, at a non-posted speed limit, use the roadway in the vicinity of the crossing. The railroad operates over a single main line track carrying freight trains.

The Commission, having given due consideration to the evidence of record, is of the opinion and finds that:

- 1) the Township of Ogden, Champaign County, Illinois, is a political subdivision organized and existing under and by the virtue of the laws of the State of Illinois;
- 2) the Union Pacific Railroad Company is a company engaged in the transportation of persons and/or property by rail in the State of Illinois and as such, is a rail carrier as defined by the Illinois Commercial Transportation Law;
- 3) the recitals of fact as set forth in the prefatory portion of this Order are true and correct and are hereby adopted as findings of fact;
- 4) public convenience and necessity do not require the retention of the railroad crossing AAR/DOT 166 927K, milepost 120.50CC, in Ogden Township, Champaign County, Illinois;
- 5) it is fair and reasonable to require that the entire cost of closing, abolishing, and barricading the TR 131 crossing be borne by the UP; said barricades to be by a type-3 barricade conforming to the requirements of 92 Ill. Adm. Code 1535.701 and to the Manual on Uniform Traffic Control Devices; the cost to close the TR 131 crossing as estimated by the UP is \$10,550; this cost will be borne 100% by the railroad;
- 6) the Township shall post "Road Closed" signs on each highway approach to the closed TR 131 crossing;
- 7) it is fair and reasonable that an incentive payment of \$25,000 be made by the Grade Crossing Protection Fund to the Township's Motor Fuel Tax account for the voluntary closing of the subject crossing;

- 8) the closure of the crossing should be completed within six (6) months from the date of this Order;
- 9) Chapter 625 ILCS 5/18c-1701 and 5/18c-1704 require each "person" as defined by 5/18c-1104 to comply with every regulation or Order of the Commission; these sections further provide that any person who fails to comply with a Commission regulation or Order shall forfeit to the State not more than \$1,000 for each such failure, with each day's continuance of the violation being considered a separate offense; while the Commission expects all parties to comply with this Order in all matters addressed herein in a timely manner, the Commission advises that any failure to comply may result in the assessment of such sanctions.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the Union Pacific Railroad Company be, and it is hereby, required and directed to close, abolish, and barricade the crossing at TR 131, AAR/DOT 166 927K, milepost 120.50CC, located in Ogden Township, Champaign County, Illinois.

IT IS FURTHER ORDERED that the cost for the closure and barricading of the TR 131 crossing be borne solely by the Union Pacific Railroad Company.

IT IS FURTHER ORDERED that the Illinois Department of Transportation shall transfer from the Grade Crossing Protection Fund an amount not to exceed \$25,000 to the Motor Fuel Tax account of the Ogden Township Highway Commissioner of Champaign County.

IT IS FURTHER ORDERED that Ogden Township of Champaign County may use the funds provided by the Grade Crossing Protection Fund granted in return for the voluntary closure of the TR 131 crossing, only for purposes IDOT allows for Motor Fuel Tax funds.

IT IS FURTHER ORDERED that the closure of the TR 131 crossing shall be completed within six (6) months from the date of this Order. Barricades shall be in place prior to the removal of the crossing surface and warning devices.

IT IS FURTHER ORDERED that any person or party making a Request For Extension Of Time up to thirty (30) days to complete a project ordered by the Commission must file a request with the Director of Processing and Information no later than fourteen (14) days in advance of the scheduled deadline. An Administrative Law Judge will consider and decide the request.

IT IS FURTHER ORDERED that any person requesting an extension of time that exceeds thirty (30) days must file a Petition for Supplemental Order with the Director of Processing and Information no later than twenty-one (21) days in

advance of the scheduled deadline. The Commission will decide Petitions For Supplemental Orders.

IT IS FURTHER ORDERED that Requests For Extension Of Time and Petitions For Supplemental Orders must include the reason(s) the additional time is needed to complete the work and the time within which the project will be completed. Prior to submitting a Request For Extension Of Time or a Petition For Supplemental Order, the person must notify the Commission's Rail Safety Program administrator that it is unable to complete the project within the ordered timeframe.

IT IS FURTHER ORDERED that the Commission or its Administrative Law Judge reserves the right to deny Petitions For Supplemental Orders and Requests For Extensions of time, if the reason(s) supporting the request is insufficient or where it appears the person has not made a good faith effort to complete the project within the allotted time. Failure of the Commission or Administrative Law Judge to act on a pleading prior to the deadline means the originally ordered completion date remains in effect.

IT IS FURTHER ORDERED that Union Pacific Railroad Company shall notify the Director of Processing and Information, Transportation Division of the Commission, within five (5) days of the completion of the work herein required of it, by filing a National Inventory Update Report Form as notice of said completion.

IT IS FURTHER ORDERED that Ogden Township of Champaign County shall notify and submit to the Director of Processing and Information, Transportation Division of the Commission, within five (5) days of the completion of the work herein required of it, a written notice of said completion.

IT IS FURTHER ORDERED that subject to Sections 18c-2201 and 18c-2206 of the Law, this is a final decision of the Commission subject to Administrative Review Law.

By Order of the Commission this 8<sup>th</sup> day of January, 2003.

JUDGE	<i>[Signature]</i>
SECTION CHIEF	
ORDERS SUPERVISOR	<i>[Signature]</i>

*Kevin H. Wright*

Chairman